

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) PACA Docket No. D-07-0092
)
Fresh Marketing Services, Inc.)
)
Respondent) Decision Without Hearing
) By Reason of Consent

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. § 499a et seq.; hereinafter "PACA"), instituted by a Complaint filed on April 10, 2007, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleges that during the period October 22, 2004, through July 24, 2005, Respondent Fresh Marketing Services, Inc., failed to make full payment promptly to 12 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$325,469.00 for 428 lots of perishable agricultural commodities, which it purchased, received, and accepted in the course of interstate and foreign commerce.

A copy of the Complaint was served upon Respondent. Respondent filed an Answer to the Complaint on May 1, 2007. In the Answer, Respondent admitted that the failure to make full payment promptly allegations were correct, but suggested that responsibility for the failure to make full payment promptly could not be totally attributed to Respondent.

Respondent Fresh Marketing Services, Inc., and Complainant have now agreed to the entry of a Decision Without Hearing By Reason of Consent as set forth herein. Therefore, this Decision Without Hearing By Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provision (7 C.F.R. § 1.138) of the Rules of Practice Governing

Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151; hereinafter "Rules of Practice").

Findings of Fact

1. Fresh Marketing Services, Inc. (hereinafter "Respondent"), is a corporation organized and existing under the laws of the State of Maryland. Its business address was Units 65-67, Maryland Wholesale Produce Market, Jessup, Maryland 20794. Its mailing address was P.O. Box 190, Jessup, Maryland 20794. Respondent ceased business operations on July 22, 2005. Respondent's current mailing address is c/o Gary Ward, 2525 K Street, San Diego, California 92102 or c/o Gary Ward, 2515 Miller Avenue, Escondido, California 92026.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License Number 19940130 was issued to Respondent on October 26, 1993. This license terminated on October 26, 2005, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. Respondent, during the period October 22, 2004 through July 24, 2005, failed to make full payment promptly to 12 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$325,469.00 for 428 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce.

5. On August 24, 2005, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court for the District of Maryland, Baltimore, Maryland. This petition was designated case number 05-28973-DK. Respondent admits in Bankruptcy schedule F that all 12 sellers listed in paragraph III of the

Complaint hold unsecured claims for unpaid produce debt totaling \$320,803.02.

Conclusions

Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), by failing to make full payment promptly with respect to the transactions set forth in Findings of Fact No. 4 above, for which the Order below is issued.

Order

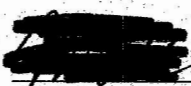

Respondent Fresh Marketing Services, Inc., is hereby found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and the facts and circumstances of the violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This decision and Order shall become final and effective upon issuance pursuant to section 1.138 (7 C.F.R. § 1.138) of the Rules of Practice.

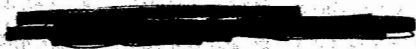
Copies of this decision and Order shall be served upon the parties.

Done at Washington, D.C.


this 17th day of July, 2007

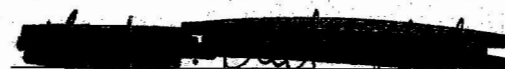
 
Administrative Law Judge

For Respondent


Gary Ward
President
Fresh Marketing Services, Inc.

For Complainant


Eric M. Forman
Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service


Leah C. Battaglioli
Attorney for Complainant